UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND
Northern Division

UNITED STATES OF AMERICA,

Plaintiff,

- against - Civil No. 13-cv-01183-CCB

3 Knife-Shaped Coins, 12 Other Chinese Coins, and
7 Cypriot Coins,

Defendants.

- -X

GOVERNMENT'S SUGGESTED SCHEDULING ORDER

The United States of America, by its counsel, submits this response to the court's request for a proposed scheduling order prior to the conference with the court on July 26, 2013. For the following reasons, the Government suggests that order scheduling discovery is premature, and that the court should instead set a schedule for addressing a motion by the Government that, if granted, would significantly narrow the scope of discovery.

Background

The defendant property was seized by Customs and Border Protection in 2009. In 2010, Claimants filed a civil lawsuit challenging the enactment of the statutes and regulations underlying the Government's forfeiture action. This court rejected that challenge in 2011, the Fourth Circuit affirmed the district court in 2012, and the Supreme Court denied *cert.* in March, 2013.

In April 2013, the Government filed this forfeiture action, seeking the forfeiture of the defendant property under 19 U.S.C. § 2609 and related statutes and regulations. Claimant

submitted an answer to the complaint on June 19, 2013. Shortly thereafter, the court issued an informal order directing the parties to confer and to submit a proposed scheduling order in advance of the conference call scheduled for July 26, 2013. The court also directed that a dispositive motion be filed by July 24, 2013.

Status of the Case

The parties conferred on July 15, 2013 and could not agree on a proposed schedule. In short, the parties have dramatically different views as to how this case should proceed.

In the Government's view, the Answer filed by the Claimant on June 19, 2013 raises a large number of issues that should be addressed before discovery begins. First, the Answer signals Claimant's intent to attempt to re-litigate many if not all of the issues that were addressed by the this court and the Court of Appeals in 2011 and 2012. For example, Claimant's Affirmative Defenses 7 and 8 contest the forfeiture on the ground that the applicable statute and regulations were enacted in violation of the Convention on Cultural Property Implementation Act — precisely the issue that was at the heart of Claimant's 2010 lawsuit. Likewise, Affirmative Defense 11 contests the forfeiture on the ground that the State Department misled Congress when the statute was enacted. In the Government's view, none of the issues that were litigated in the previous lawsuit are before the court in this case, and the parties should not have to invest judicial resources in conducting discovery on those issues.

In addition, the Answer raises defenses that are so vague that it is impossible to know what issue Claimant intends to raise or whether Claimant seriously intends to contest the allegations in the Government's complaint,. *See* Affirmative Defense 9 ("Plaintiff's claims are barred in whole or in part by the doctrines of waiver and estoppel"). *See also* Claimant's Answer to Allegations 4, 5 and 6 (failing to make clear whether Claimant intends to contest the

basis for subject matter jurisdiction, *in rem* jurisdiction and venue). It would be in the interest of the efficient administration of justice for the court to direct Claimants to clarify these issues so that the parties do not have to waste time conducting discovery on issues that are in fact not contested. *See United States v. $196,969.00 in U.S. Currency,* ___ F.3d ___, 2013 WL 2507000 (7th Cir. June 11, 2013) (rejecting Government's motion to dismiss a vague claim for failure to comply with Rule G(5), but noting that the court could avoid the unnecessary discovery that a vague claim might generate by directing claimant to clarify and add specificity to his claim). *See generally United States v. 1866.75 Board Feet and 11 Doors and Casings*, 2008 WL 839792 (E.D. Va. 2008) (the purpose of the answer is to give the plaintiff reasonable notice of the parts of its complaint that the claimant intends to put in issue; even a *pro se* claimant must exercise diligence in answering the complaint pursuant to Rule 8).

Finally, the Answer raises defenses that can and should be addressed in the context of a motion to strike the defense as a matter of law without conducting discovery. For example, Affirmative Defense 2 asserts the innocent owner defense. 18 U.S.C. § 983(d). It is undisputed, however, that Claimant is the perpetrator of the conduct giving rise to the alleged forfeiture. As a matter of law, the perpetrator of the conduct giving rise to the forfeiture cannot be an innocent owner, because such person cannot show that he unaware of that conduct as Section 983(d)(2) requires. *See United States v. Funds From First Regional Bank Account (R K Company, Inc.),* 2009 WL 667188, *11 (W.D. Wash. Mar. 11, 2009) (the person whose conduct constituted the crime giving rise to the forfeiture cannot assert an innocent owner defense under § 983(d)(2); the statute requires proof of ignorance of the conduct giving rise to the forfeiture, and the person who committed the offense cannot make that showing because the conduct was his own; that he was unaware the conduct was illegal does not matter). Accordingly, if the court finds that Claimant's

conduct constitutes a basis for the forfeiture, Claimant will not have an innocent owner defense, and if the court finds that that conduct *does not* give rise to the forfeiture, the innocent owner defense will be moot. Accordingly, the Government suggests that the court's resolution of this issue – and others of a similar nature – on a dispositive motion, would make a great deal of discovery unnecessary.

Proposed Order

For all of these reasons, the Government respectfully suggests that instead of issuing an order scheduling discovery – as Claimant intends to propose – the court should set a date for the Government to file a motion that raises all of its challenges to Claimant's Answer, and for Claimant's response and the Government's reply, so that the court can determine which, if any, of Claimant's 12 affirmative defenses should be stricken, and which of its challenges to the Government's complaint should be clarified. In this way, Government suggests that the scope of discovery – and hence, the scope of the discovery disputes the court may be asked to resolve – may be significantly narrowed.

Claimant's Request for Admissions

Prior to the court's entry of its informal order directing the parties to propose a scheduling order, Claimant served the Government with interrogatories, requests for the production of documents, and requests for admissions. The Government takes the view that all of these requests were premature, inasmuch as the court has not yet issued a scheduling order. *See United States v. $134,750 in U.S. Currency,* 2010 WL 1741359, *4 (D. Md. Apr. 28, 2010) (if, under the local rules, discovery may not commence until the court has issued a scheduling order; requests for admission sent by the Government before the court issued the scheduling order are premature, and are not deemed admitted if ignored).

Nevertheless, Claimant's counsel has advised the Government that Claimant takes the view that if the Government fails to respond to the Request for Admissions, they will be deemed admitted. Accordingly, the Government respectfully asks the court to clarify whether the Government is required to respond to the Requests for Admissions and Claimant's other discovery requests at this time, or whether the Government may await the entry of the court's scheduling order to do so.

Respectfully submitted,

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/s/

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